

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARTHA GUILLEN GONZALEZ,

Plaintiff,

v.

NEXUS ADMINISTRATORS, LLC, et al.,

Defendants.

Case No. 1:25-cv-00141-KES-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DENYING
PLAINTIFF'S APPLICATION TO PROCEED
IN FORMA PAUPERIS AND REQUIRING
PLAINTIFF TO PAY THE FILING FEE

(ECF Nos. 2, 3)

**OBJECTIONS DUE WITHIN FOURTEEN
DAYS**

Plaintiff Martha Guillen Gonzalez, proceeding *pro se*, filed a complaint in this action on February 4, 2025. (ECF No. 1.) Plaintiff did not pay the filing fee and instead filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.) Because the Court is unable to determine from the information provided in the submitted short form application if Plaintiff is entitled to proceed in this action without prepayment of fees, the Court ordered that Plaintiff complete and file an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) – AO 239, which the Clerk of Court attached to the order. (ECF No. 3.) The Court noted that if Plaintiff is unwilling to complete and submit the Long Form within thirty days, Plaintiff must pay the filing fee in full. Plaintiff failed to comply with the Court's order by the deadline.

On March 12, 2025, the Court ordered that Plaintiff show cause within fourteen (14) days

1 why her application to proceed *in forma pauperis* should not be denied. (ECF No. 4.) The Court
2 advised Plaintiff that submitting a completed Long Form application or paying the filing fee
3 would satisfy the order. The Court cautioned Plaintiff that if she failed to comply with the order
4 to show cause, the Court would recommend that Plaintiff's application be denied. Plaintiff failed
5 to respond to the Court's order to show cause by the deadline. For the following reasons, the
6 Court recommends denying Plaintiff's application to proceed *in forma pauperis*.

7 In order to proceed in court without prepayment of the filing fee, a plaintiff must submit
8 an affidavit demonstrating they are "unable to pay such fees or give security therefor." 28
9 U.S.C. § 1915(a)(1). The right to proceed without prepayment of fees in a civil case is a
10 privilege and not a right. Rowland v. California Men's Colony, Unit II Men's Advisory Council,
11 506 U.S. 194, 198 n.2 (1993); Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984)
12 ("permission to proceed *in forma pauperis* is itself a matter of privilege and not right; denial of
13 *in forma pauperis* status does not violate the applicant's right to due process"). A plaintiff need
14 not be absolutely destitute to proceed *in forma pauperis* and the application is sufficient if it
15 states that due to his poverty he is unable to pay the costs and still be able to provide himself and
16 his dependents with the necessities of life. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S.
17 331, 339 (1948). Whether to grant or deny an application to proceed without prepayment of fees
18 is an exercise of the district court's discretion. Escobedo v. Applebees, 787 F.3d 1226, 1236 (9th
19 Cir. 2015).

20 In Plaintiff's short form application, Plaintiff does not provide a response to Question 2
21 asking Plaintiff that, if she is employed, to provide her employment information and gross and
22 take-home pay or wages. (ECF No. 2.) Further, Plaintiff's response to Question 3 regarding
23 "other income" raises questions regarding Plaintiff's entitlement to proceed without prepayment
24 of fees. In response, Plaintiff states, in full:

25 I received \$250,000 in life insurance proceeds in August of 2024
26 and shared it with my late husband's daughter as he requested.
27 Believing I would promptly receive about \$175,000 (after taxes) in
28 401k survivor benefits, I used all my life insurance proceeds to pay
off all my debts, home, and car and to purchase a stone for my late
husband's grave. I now have no money at all but expect to start
getting from \$500 to \$1,000 per month in survivor social security

benefit in the next few months as their benefits process is slow and complicated. I started it a month ago and it has gotten nowhere to date.

(Id. at 2.)

Plaintiff states she has \$100 in a checking or savings account and owns the following assets: (1) a home worth approximately \$250,000, which is paid off, and (2) a 2024 Toyota RAV4, worth approximately \$25,000.00. (Id. at 2.) Plaintiff states her monthly expenses, which include transportation, property taxes, utilities, telephone, internet, clothing and food, home maintenance, and entertainment amount to approximately \$2,000 per month. (Id.) Plaintiff does not claim any dependents or any debts.

In assessing whether a certain income level meets the poverty threshold under Section 1915(a)(1), courts look to the federal poverty guidelines developed each year by the Department of Health and Human Services. See, e.g., Boulas v. U.S. Postal Serv., No. 1:18-cv-01163-LJO-BAM, 2018 WL 6615075, at *1 n.1 (E.D. Cal. Nov. 1, 2018) (applying federal poverty guidelines to deny IFP application); Paco v. Myers, No. CIV. 13-00701 ACK, 2013 WL 6843057 (D. Haw. Dec. 26, 2013); Lint v. City of Boise, No. CV09-72-S-EJL, 2009 WL 1149442, at *2 (D. Idaho Apr. 28, 2009) (and cases cited therein).

Construing Plaintiff's failure to respond to Question 7 as though she claims no dependents, the 2025 Poverty Guidelines provide that the poverty guideline for the 48 contiguous states for a household of one is \$15,560. 2025 Poverty Guidelines, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines> (last visited April 1, 2025). Aside from the \$250,000 in life insurance proceeds received six months prior to the filing of the application, Plaintiff checked "no" to receiving income in the past twelve months and contends she "now h[as] no money at all." (ECF No. 2 at 2.) However, Plaintiff simultaneously describes monthly expenses amounting to approximately \$2,000. The source of payment for Plaintiff's high monthly expenses is unclear. Because Plaintiff refuses to file a long form application to provide a break down of her \$2,000 in monthly expenses by category, it is also unclear how much of the monthly expenses are necessary costs of living or recreational. The Court also notes that Plaintiff owns nearly \$275,000 in assets and omits owing any debts or

1 financial obligations.

2 The Court finds the limited information contained in the application inconsistent with a
3 finding of poverty based on income received in the past twelve months, stated monthly expenses,
4 and stated assets.

5 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff's application to proceed
6 *in forma pauperis* be DENIED and Plaintiff be ordered to pay the \$405.00 filing fee for this
7 action.

8 These findings and recommendations are submitted to the District Judge to be assigned to
9 this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within
10 **fourteen (14) days** of service of this recommendation, Plaintiff may file written objections to
11 this findings and recommendations with the court. Such a document should be captioned
12 "Objections to Magistrate Judge's Findings and Recommendations." The District Judge will
13 review the Magistrate Judge's findings and recommendations pursuant to 28 U.S.C. §
14 636(b)(1)(C). Plaintiff is advised that failure to file objections within the specified time may
15 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.
16 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

17 **Should Plaintiff file an Application to Proceed in District Court Without Prepaying**
18 **Fees or Costs (Long Form) – AO 239 during the objection period, the Court will consider**
19 **the application.**

20 IT IS SO ORDERED.

21 Dated: **April 7, 2025**



22 STANLEY A. BOONE
23 United States Magistrate Judge
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